A **DAVID CHEAH SENG CHYE v. SO MIAU SONG & ORS**

HIGH COURT MALAYA, PULAU PINANG
AHMAD SHAHRIR MOHD SALLEH JC
[SUMMONS NO: 21NCVC-4-01-2015]
9 FEBRUARY 2018

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LEGAL PROFESSION: *Practice of law – Practice and etiquette – Application to disqualify solicitor from acting as counsel for plaintiff – Dispute regarding nature of trust – Solicitor had acted for previous trustees and in possession of relevant documents and information – Whether solicitor privy to certain information and*
C *instructions – Whether solicitor would be called as witness to give evidence on certain documents – Whether conflicting stance arose in respect of same subject matter by same person – Whether solicitor in position of conflict if not restrained from representing plaintiff – Whether there was violation of rr. 3, 4, 5 and 35 of Legal Profession (Practice and Etiquette) Rules 1978*

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LEGAL PROFESSION: *Conflict of interest – Professional conduct – Application to disqualify solicitor from acting as counsel for plaintiff – Dispute regarding nature of a trust – Solicitor had acted for previous trustees and in possession of relevant documents and information – Whether solicitor privy to certain information and instructions – Whether solicitor would be called as witness to give evidence on*
E *certain documents – Whether conflicting stance arose in respect of same subject matter by same person – Whether solicitor in position of conflict if not restrained from representing plaintiff – Whether there was violation of rr. 3, 4, 5 and 35 of Legal Profession (Practice and Etiquette) Rules 1978*

F The plaintiff was the great grandson of Cheah Leong Keah ('deceased') who died testate leaving a will and a codicil and indenture. Pursuant to the will, the deceased created a trust to build a pagoda on four pieces of land to be named 'Liam Hood Tong Chor Seng Thuan'. The pagoda was never built and the Liam Hood Tong Chor Seng Thuan trust ('Liam Hood trust') was dissolved. Subsequently, a dispute arose between the plaintiff and the
G defendants as to the nature of the Liam Hood trust. According to the plaintiff, the Liam Hood trust was a private trust whereas the defendants maintained that the Liam Hood trust was a public charitable trust and maintained that the Liam Hood trust had not been dissolved. The first to fifth defendants filed this application (encl. 131) to disqualify John Khoo Boo Lai ('John Khoo')
H and Messrs Ismail Khoo & Associates from acting as counsel or co-counsel or as solicitors for the plaintiff in the present action. According to the first to fifth defendants, John Khoo had acted for the previous trustees in another originating summons thus the appearance of John Khoo and his legal firm as counsel and solicitors for the plaintiff violated rr. 3, 4, 5 and 35 of the Legal
I Profession (Practice and Etiquette) Rules 1978 ('Rules 1978') because John Khoo was in a position of conflict and that he was likely to be called as a witness in the present action.

Held (allowing first to fifth defendants' application):

(1) When a specific allegation of material fact is made by a party in an affidavit, the adverse party has a duty to specifically rebut that allegation. General denial is not sufficient and would inevitably result in the allegations by the former being deemed admitted by the latter. The plaintiff herein had chosen not to dispute the specific averments in the affidavits by the first to fifth defendants that the previous trustees who were represented by John Khoo took the position that the Liam Hood trust was a public charitable trust. General traverses in the plaintiff's affidavits without averments specifically condescending to the allegation of facts contained in the first to fifth defendants' affidavits were not sufficient. (paras 30 & 31)

(2) When John Khoo represented the previous trustees and the previous trustees took the stand that the Liam Hood trust was a public charitable trust, John Khoo must be privy to certain information and instructions from his client which pointed to the fact that the Liam Hood trust was in fact a public charitable trust before he advanced arguments in support of his client's position. In this circumstance, when John Khoo was engaged to represent the plaintiff in respect of the same trust, there was a great likelihood that John Khoo would be called as a witness by the defendants to give evidence as to certain documents, correspondence of cause papers prepared by him or his firm since John Khoo had acted for the previous trustees who took the position that the trust was a public charitable trust whereas he now intended to act for the plaintiff who took the position that the trust was a private trust. That would present a conflicting stance in respect of the same subject matter by the same person. (paras 33 & 34)

(3) The averments of material facts made by the first to fifth defendants had not been specifically denied by the plaintiff and the plaintiff must be deemed to have admitted to those averments. Based on these deemed admissions and the facts of the present application, as well as the fact that John Khoo had been included as one of the witnesses to be called by the defendants, there was a likelihood that John Khoo and his firm would be in a position of conflict if John Khoo were not restrained from representing the plaintiff. (para 36)

Case(s) referred to:

Abdul Halim Abdul Hanan & Ors v. Pengarah Penjara, Taiping & Ors [1996] 1 LNS 67 HC ***(refd)***

Citibank NA v. ND Chandrasegaran Nee Nirmala Devi P Ratnadurai [2007] 1 LNS 156 HC ***(refd)***

Dato' Sri Bala Krishnan Vellasamy & Ors v. Cityteam Media Sdn Bhd & Anor [2015] 4 CLJ 247 HC ***(refd)***

Gerard Jude Timothy Pereira v. Kasi KL Palaniappan [2017] 1 LNS 889 CA ***(refd)***

A *Mirza Mohamed Tariq Beg Mirza HH Beg v. Margaret Low Saw Lui & Ors [2009] 4 CLJ 303 CA* ***(refd)***
Ng Siew Lan v. John Lee Tsun Vui & Anor [2017] 2 CLJ 245 FC ***(refd)***
Prince Jefri Bolkiah v. KPMG (a firm) [1999] 1 All ER 517 ***(refd)***
Quah Poh Keat & Ranjit Singh Taram Singh *[2009] 4 CLJ 316 CA* ***(refd)***
R Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

B **Legislation referred to:**
Legal Profession (Practice and Etiquette) Rules 1978, rr. 3, 4, 5, 28(a), 35
Rules of Court 2012, O. 92 r. 4

For the plaintiff - Ajmer Singh Sandhu, Joshua Narendran & Melissa Sukri; M/s Ajmer Sandhu & Ong
C *For the 1st - 5th defendants - T Gunaseelan, Balwant Singh & Ung Chirt Kye; M/s Phee, Chen & Ung*
For the 6th defendant - Attendance dispensed with

Reported by Suhainah Wahiduddin

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JUDGMENT
(encl. 131)

Ahmad Shahrir Mohd Salleh JC:

E **Introduction**

[1] This is an application dated 31 October 2017 filed by the first to the fifth defendants (encl. 131) under O. 92 r. 4 of the Rules of Court 2012 to disqualify Mr John Khoo Boo Lai and Messrs Ismail Khoo & Associates from acting as counsel or co-counsel, or as solicitors for the plaintiff in the F present action. On 4 December 2017, this court allowed the defendants' application.

[2] The plaintiff is not satisfied with the decisions of this court in respect of encl. 131 and on 11 December 2017 filed an appeal to the Court of Appeal against the decision. In the meantime, the present action has been fixed for G continued hearing on the following dates:

(a) 10 to 12 January 2018;

(b) 24 to 26 January 2018; and

(c) 1 to 2 February 2018.

H **[3]** The affidavits filed by the respective parties in support of and in response to the first to the fifth defendants' application are as follows:

(a) "Afidavit sokongan" affirmed on 30 October 2017 by Tan Siew Joo (encl. 132);

I (b) "Afidavit balasan" affirmed on 6 November 2017 by David Cheah Seng Chye (encl. 141);

(c) "Afidavit balasan (2)" affirmed on 6 November 2017 by Khoo Boo Lai (encl. 142);

(d) "Afidavit jawapan defendan pertama hingga defendan kelima (1)" affirmed on 12 November 2017 by Tan Siew Joo (encl. 145); and

(e) "Afidavit jawapan defendan pertama hingga defendan kelima (2)" affirmed on 13 November 2017 by Tan Siew Joo (encl. 146).

Brief Factual Matrix

[4] The plaintiff is the great-grandson of Cheah Leong Keah (deceased) who died testate on 25 March 1941 leaving a will dated 26 November 1938. The deceased had also made a codicil and indenture both dated 6 March 1941. Pursuant to the will, the deceased created a trust to build a pagoda on four pieces of land to be named "Liam Hood Tong Chor Seng Thuan" together with a few outhouses to be used as ancestral hall to worship their ancestors. The pagoda was never built and it is contended by the plaintiff that the "Liam Hood Tong Chor Seng Thuan" trust was dissolved pursuant to an order dated 29 March 1968 ("first order") made by His Lordship Justice HS Ong (as he then was) *vide* originating summons no. 465 of 1963.

[5] Thereafter, an application was made *vide* originating summons no. 387 of 1971 to dispose of the four pieces of land on which the pagoda was supposed to be built. This application was made on the supposition that when the "Liam Hood Tong Chor Seng Thuan" trust was dissolved pursuant to the first order, the four pieces of land where the pagoda was supposed to be built on have reverted back to the settlors. This application was however, dismissed by the court.

[6] Both the plaintiff and the defendants seriously dispute the nature of the "Liam Hood Tong Chor Seng Thuan" trust. According to the plaintiff, the "Liam Hood Tong Chor Seng Thuan" trust is a private trust whereas the defendants maintain that the "Liam Hood Tong Chor Seng Thuan" trust is a public charitable trust. Whilst the plaintiff claims that when the "Liam Hood Tong Chor Seng Thuan" trust was dissolved pursuant to the first order, the four pieces of land where the pagoda was supposed to be built on have reverted back to the settlors, the defendants maintain that the first order did not dissolve the "Liam Hood Tong Chor Seng Thuan" trust so created but merely state that the gifts had lapsed and that the first order did not have the effect of reverting the four pieces of land back to the settlors and that the four pieces of land may still be applied in cy-pres to prevent the "Liam Hood Tong Chor Seng Thuan" trust from failing.

[7] Chronologically, the various orders in respect of the trust and the four pieces of land are as follows:

(a) an order dated 29 March 1968 ("first order") made by His Lordship Justice HS Ong (as he then was) *vide* originating summons no. 465 of 1963 in respect of the following instruments made by Cheah Leong Keah (deceased) ("instruments"):

(i) the will dated 20 November 1938;

(ii) the codicil dated 6 March 1941; and

(iii) the indenture dated 6 March 1941,

(b) the "subsequent orders" as follows:

(i) the order dated 9 January 1981 made by His Lordship Justice FC Arulanandom (as he then was) in originating summons no. 551 of 1980;

(ii) the order dated 2 September 1982 made by Judicial Commissioner Mustafa Hussein (as he then was) in originating summons no. 387 of 1971;

(iii) the order dated 12 September 2001 made by His Lordship Justice Dato' Tee Ah Sing (as he then was) in originating summons no. 24-145-1998;

(iv) the order dated 16 January 2008 made by His Lordship Justice Dato' Ghazali bin Haji Cha in originating summons no. 24-1487-05; and

(v) the order dated 7 May 2014 made by Judicial Commissioner Wong Teck Meng (as he then was) in originating summons no. 24NCVC-369-04-2014.

[8] On 8 January 2015, the plaintiff commenced the present action against the defendants for the following reliefs:

(a) that the subsequent orders be declared null and void and invalid;

(b) that the execution of the order dated 7 May 2014 made by Judicial Commissioner Wong Teck Meng (as he then was) be stayed pending the disposal of the present action;

(c) that the trustees for "Liam Hood Chor Seng Tong Thuan, Amanah Kebajikan Awam" appointed *vide* any subsequent orders be removed;

(d) that the Registrar of Land Titles be directed to take all necessary actions to give effect to the order of this court;

(e) cost; and

(f) any other orders or further reliefs as this court deems fit.

[9] Since the filing of the present action, there has been 15 case managements carried out and a number of interlocutory applications were made before the trial eventually commenced on 2 December 2016. On 27 March 2017, the plaintiff sought to introduce additional bundle of documents in the form of "ikatan dokumen tambahan plaintif ketiga" in the midst of trial. Upon objections by learned counsel for the first to fifth defendants, the court ruled that the additional bundle of documents could not be included.

[10] The case was last heard on 7 June 2017 and the plaintiff has called three witnesses with an impending cross-examination for PW2 and PW3. The case was again fixed before another court for continued hearing on 12 October 2017 but due to certain reasons, the trial could not proceed before that court and the case was then fixed for case management before this court for the first time on 27 October 2017.

[11] A total of three case managements were held and on the third case management date on 24 November 2017, the current dates for continuation of the hearing, which are suitable to all counsel representing the parties, have been fixed, namely on 10 to 12 January 2018, 24 to 26 January 2018 and 1 to 2 February 2018.

[12] On 31 October 2017, the first to the fifth defendants filed this application (encl. 131) to disqualify Mr John Khoo Boo Lai and Messrs Ismail Khoo & Associates from acting as counsel or co-counsel, or as solicitors for the plaintiff in the present action. On 4 December 2017, this court allowed the defendants' application.

Summary Of Deliberation

The First To The Fifth Defendants' Brief Contention In Support Of The Application

[13] Briefly, learned counsel for the first to the fifth defendants contends that Mr John Khoo Boo Lai of Messrs Ismail, Khoo & Associates who had acted for the previous trustees, had received and were in possessions of documents and information in relation to the particular stance taken then, namely that the "Liam Hood Tong Chor Seng Thuan" trust is a public charitable trust.

[14] It is thus not open for Mr John Khoo Boo Lai or Messrs Ismail, Khoo & Associates to use any information obtained from the documents and information, either directly or indirectly, against the current trustees and advanced directly opposite arguments that the trust is now a private trust. This strikes at the heart of a conflict of interest position whereby Mr John Khoo Boo Lai would be put in an embarrassing situation. This is against r. 5 as well as r. 3 of the Legal Profession (Practice and Etiquette) Rules 1978.

[15] The learned counsel for the first to fifth defendants refers to the case of *Dato' Sri Bala Krishnan Vellasamy & Ors v. Cityteam Media Sdn Bhd & Anor* [2015] 4 CLJ 247 whereby it was held that the Legal Profession (Practice and Etiquette) Rules 1978 should be broadly and sensibly construed and that a solicitor who has violated the Legal Profession (Practice and Etiquette) Rules 1978 would be disqualified from acting in the matter.

[16] Learned counsel for the first to fifth defendants contends that Mr John Khoo Boo Lai is a potential witness to be called by the defendants pertaining to the affidavit relating to the same trust which was affirmed by

the previous trustees in originating summons no. 24-145-1998. Learned counsel for the defendants argues that this is an inescapable consequence as Mr John Khoo Boo Lai has in fact been included as one of the witnesses to be called by the defendants in the defendant list of witnesses filed for the purposes of the trial of the present action.

[17] Learned counsel for the first to fifth defendants submits that this has brought Mr John Khoo Boo Lai within the contemplation of the r. 28(a) Legal Profession (Practice and Etiquette) Rules 1978 which prohibits an advocate and solicitor to appear in a case where he is a potential witness. Learned counsel for the first to fifth defendants relies on the decision of the Court of Appeal in the case of *Quah Poh Keat & Ors v. Ranjit Singh Taram Singh* [2009] 4 CLJ 316 CA whereby it was held, *inter alia*, that the obvious answer for the Bar to appear in a case where an advocate and solicitor has reasons to believe that he will be a potential witness is to avoid any conflict of interest or embarrassing ethical issues and that pursuant to the inherent jurisdiction, a judge has the power to disqualify and restrain him at the outset.

[18] The Court of Appeal in *Quah Poh Keat*'s case referred to the case of *Abdul Halim Abdul Hanan & Ors v. Pengarah Penjara, Taiping & Ors* [1996] 1 LNS 67; [1996] 4 MLJ 54 whereby it was held that although r. 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978 does not envisage *ipso facto* that an advocate and solicitor is disqualified from appearing in court if called as a witness, the likelihood of him being called as a witness of any material or disputed facts would give rise to the restriction.

The Plaintiff's Brief Contention In Opposing The Application

[19] According to learned counsel for the plaintiff, the plaintiff only came to realise of the existence of these documents after Mr John Khoo Boo Lai has been appointed to act as counsel for the plaintiff in the present action. Prior to the appointment of Mr John Khoo Boo Lai as his counsel, the plaintiff has no knowledge and is not in possession of those documents.

[20] Learned counsel for the plaintiff also contends that he would be deprived of the professional legal services of Mr John Khoo Boo Lai to represent him as counsel in the present action which is complicated if the application for stay is not allowed. According to learned counsel for the plaintiff, Mr John Khoo Boo Lai is in possession of certain information from the beneficiaries in other related matters and that the third defendant is apprehensive of the cross-examination which he may be subjected to if Mr John Khoo Boo Lai acts as counsel for the plaintiff. It is also contended by learned counsel for the plaintiff that the first to third defendants are fretful of the fact that the new documents relating to a tripartite agreement obtained by the plaintiff through Mr John Khoo Boo Lai would disclose that there are attempts by certain quarters to make a profit out of the lands belonging to Cheah Leong Keah, the deceased.

[21] learned counsel for the plaintiff refers to the case of *Citibank NA v. Mrs ND Chandrasegaran Nee Nirmala Devi P Ratnadurai* [2007] 1 LNS 156; [2007] 8 MLJ 149 and submits that the first to fifth defendants have not come with clean hands in respect of their application to disqualify Mr John Khoo Boo Lai. On the strength of exh. "DCSC-1" appended in encl. 177, learned counsel for the plaintiff contends that Mr John Khoo Boo Lai was acting for clients who took the position that the trust is not a public charitable trust and does not require the consent of the honourable Attorney General contrary to the first to fifth defendants' contention. The court in *Citibank NA* held *inter alia* that the danger of fraud being perpetrated against the court is a special circumstance for the grant of a stay.

Evaluation And Decision

[22] In respect of an application to disqualify a solicitor from acting on behalf of a client, full particulars of the confidential information alleged to have been disclosed to the solicitor must be placed before the court. His Lordship Raus Sharif JCA (now CJ) in delivering the judgment of the Court of Appeal in the case of *Mirza Mohamed Tariq Beg Mirza HH Beg v. Margaret Low Saw Lui & Ors* [2009] 4 CLJ 303, held, *inter alia,* that:

> Two important principles of law emerge from the case of *Prince Jefri Bolkiah v. KPMG (a firm)*. Firstly, for the principle of confidentiality to apply warranting a court to intervene, there must be established a relationship of solicitor and client or some other fiduciary relationship. In the absence of such a relationship, the principle does not apply. Secondly, it depends on the facts of each case whether confidential information was conveyed. In order to bar a solicitor or other fiduciary from acting, the applicant must place before the court full particulars of the relevant confidential information that was allegedly disclosed to the solicitor or fiduciary. Mere general or vague allegations are insufficient.

[23] Speaking for the Federal Court in the case of *Ng Siew Lan v. John Lee Tsun Vui & Anor* [2017] 2 CLJ 245 FC, His Lordship Abdul Rahman Sebli JCA made reference, amongst others, to the authoritative book on *Torts* by Clerk & Lindsell and the decision of the House of Lords in *Prince Jefri Bolkiah v. KPMG (a firm)* [1999] 1 All ER 517 in determining whether a conflict of interest arises in the appointment of an advocate and solicitor. The excerpts as reproduced as follows:

> The learned authors of *Clerk & Lindsell on Torts* (18th edn.) have this to say on such conflicts of interest at paras. 8-92:
>
> > **Conflicts of interest** A lawyer owes a duty to his client not to act for another in a situation where there would be a potential conflict of interest. If such a situation arises, he must decline to act for one or the other. Such a conflict will invariably arise where one firm of solicitors represents the two parties on opposite sides in litigation. In other situations, or where a firm of solicitors has previously acted for one party and now wishes to act for another whose

A interests are opposed, there will be a breach of duty unless it is absolutely clear that there can be no leakage or misuse, deliberate or otherwise, of confidential information ...

In the House of Lords case of *Prince Jefri Bolkiah v. KPMG (a firm)* [1999] 1 All ER 517 Lord Millet whose judgment found favour with the other four law Lords said this at p. 526:

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> My Lords, I would affirm this as a basis of the court's jurisdiction to intervene on behalf of a former client. It is otherwise where the court's intervention is sought by an existing client, for a fiduciary cannot act at the same time both for and against the same client, and his firm is in no better position. A man cannot without the consent of both clients to act for one client while his partner is acting for another in the opposite interest. His disqualification has nothing to do with the confidentiality of client information. It is based on the inescapable conflict of interest which is inherent in the situation.

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D **[24]** In *Gerard Jude Timothy Pereira v. Kasi KL Palaniappan* [2017] 1 LNS 889; [2017] MLJU 925 CA, the Court of Appeal reiterated the principles that a general plea of denial does not amount to sufficient traverse. The Federal Court in *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 FC, it was observed that material averments of facts which are not denied in return must be taken to have been accepted.

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[25] The fact that Mr John Khoo Boo Lai had acted for the trustees in originating summons no. 24-145-1998 is not in dispute. Broadly, this application is premised on the grounds that the appearance of by Mr John Khoo Boo Lai and his legal firm of Messrs Ismail, Khoo & Associates as counsel and solicitors for the plaintiff violates rr. 3, 4, 5 and 35 of the Legal Profession (Practice and Etiquette) Rules 1978 because Mr John Khoo Boo Lai is in a position of conflict and that he is likely to be called as a witness in the present action.

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G **[26]** In the affidavits filed in support of the present application, the first to fifth defendants made specific allegations of material facts against Mr John Khoo Boo Lai and his legal firm of Messrs Ismail, Khoo & Associates. It is averred in encl. 132 that the trustee, Cheah Phin Cheang, who is the grandfather of the plaintiff in the present case, took the position that the "Liam Hood Tong Chor Seng Thuan" trust is a public charitable trust. It is also averred that Mr John Khoo Boo Lai and his legal firm of Messrs Ismail, Khoo & Associates had represented and acted on behalf of Cheah Phin Cheang in originating summons no. 24-145-1998 whereby the stance taken that the "Liam Hood Tong Chor Seng Thuan" trust is a public charitable trust.

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I **[27]** Enclosures 145 and 146 further made specific averments that Mr John Khoo Boo Lai had taken instructions that the "Liam Hood Tong Chor Seng Thuan" trust is a public charitable trust and therefore he should not, in the

present action, represent the plaintiff who takes the position that the "Liam Hood Tong Chor Seng Thuan" trust is a private trust. It is also averred that Mr John Khoo Boo Lai may be called as a witness in the present action.

[28] The plaintiff in his reply in encls. 141 and 142, avers that the representation by Mr John Khoo Boo Lai in the present action does not present a conflict of interest situation because originating summons no. 24 -145-1998 has been disposed of long ago, the first to the fifth defendants are fully aware of all documents relating to originating summons no. 24-145 - 1998, the parties in the originating summons and the present action are not the same parties and that Mr John Khoo Boo Lai has not been included as one of the witnesses for the defendants in their list of witnesses.

[29] It is trite that a litigant has a duty to rebut material averments in his opponent's affidavit. If he fails to do so, he risks being treated by the courts as having admitted them.

[30] I am of the considered view that general traverses in the plaintiff's affidavits without averments specifically condescending to the allegation of facts contained in the first to fifth defendants' affidavits are not sufficient. When a specific allegation of material fact is made by a party in an affidavit, the adverse party has a duty to specifically rebut that allegation. General denial is not sufficient and will inevitably result in the allegations by the former being deemed admitted by the latter.

[31] It is not disputed that Mr John Khoo Boo Lai of Messrs Ismail, Khoo & Associates had acted for the previous trustees in originating summons No. 24-145-1998. The plaintiff chose not to dispute the specific averments in the affidavits by the first to fifth defendants that the previous trustees who were represented by Mr John Khoo Boo Lai, took the position that the "Liam Hood Tong Chor Seng Thuan" trust is a public charitable trust.

[32] I am of the considered view that it is reasonable to infer that when a brief is undertaken by a solicitor, he would have sufficiently appraised himself of all the relevant documents as instructed by his client and advised his client accordingly based on that documents and the position of the law as he sees fit. The solicitor also must have taken instructions pertaining to his client's case and the case will be presented before the court in accordance with those instructions.

[33] I am of the considered view that when Mr John Khoo Boo Lai represented the previous trustees and the previous trustees took the stand that the "Liam Hood Tong Chor Seng Thuan" trust is a public charitable trust, Mr John Khoo Boo Lai must be privy to certain information and instructions from his client which points to the fact that the "Liam Hood Tong Chor Seng Thuan" trust is in fact a public charitable trust before he advanced arguments in support of his client's position.

[34] In this circumstance, when Mr John Khoo Boo Lai is engaged to represent the plaintiff in respect of the same trust, there is a great likelihood that Mr John Khoo Boo Lai would be called as a witness by the defendants to give evidence as to certain documents, correspondence of cause papers prepared by him or his firm since Mr John Khoo Boo Lai had acted for the previous trustees who took the position that the trust is a public charitable trust whereas he now intends to act for the plaintiff who takes the position that the trust is a private trust. Would that not present a conflicting stance in respect of the same subject matter by the same person? With respect, I am of the considered view that the answer is a resounding "Yes".

[35] The plaintiff is represented by a firm of solicitors and suitably-able counsel of impeccable standing. The plaintiff should be well-appraised of all the evidence in support of his case before he even proceeded to file in the writ of summons. There is nothing to prevent Mr John Khoo Boo Lai from giving the necessary instructions for trial to the present team of counsel and solicitors acting for the plaintiff as far as any specific facts and documents purportedly only privy to Mr John Khoo Boo Lai relating to the present case are concerned. On the same point, there was no similar averment of facts in the affidavit which demonstrate how Mr John Khoo Boo Lai would thereby be prevented from giving instructions as such to the present team of counsel and solicitors.

Conclusion

[36] I find that the averments of material facts made by the first to fifth defendants have not been specifically denied by the plaintiff and the plaintiff must be deemed to have admitted to those averments. I am also of the view that based on these deemed admissions and the facts of the present application, there is a likelihood that Mr John Khoo Boo Lai and his firm of Messrs Ismail, Khoo & Associates would be in a position of conflict if Mr John Khoo Boo Lai was not restrained from representing the plaintiff. Mr John Khoo Boo Lai too has been included as one of the witnesses to be called by the defendants.

[37] In the premises, I hereby allow the application by the first to the fifth defendants to disqualify Mr John Khoo Boo Lai and Messrs Ismail Khoo & Associates from acting as counsel or co-counsel, or as solicitors for the plaintiff in the present action with costs in the cause. The trial will forthwith proceed as scheduled.